

HOUSE BILL No. 1358

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-9.6.

Synopsis: Garnishment of state tax refunds. Provides that if a debt has been reduced to a judgment in Indiana and the judgment has not been satisfied, set aside, or discharged in bankruptcy, the judgment creditor may garnish a state tax refund otherwise due to the debtor. Specifies the procedures that the judgment creditor must follow in obtaining the garnishment from the department of state revenue.

Effective: July 1, 2015.

**Cox, Steuerwald, Dermody,
DeLaney**

January 14, 2015, read first time and referred to Committee on Ways and Means.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1358

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-8.1-9.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]:
4 **Chapter 9.6. Garnishment of State Tax Refunds**
5 **Sec. 1. As used in this chapter, "debt" means any amount due**
6 **and owing under a judgment.**
7 **Sec. 2. As used in this chapter, "debtor" means any person or**
8 **legal entity who owes money to another, if:**
9 (1) the debt has been reduced to a judgment in Indiana; and
10 (2) the judgment has not been:
11 (A) satisfied by court order;
12 (B) set aside by court order; or
13 (C) discharged in bankruptcy.
14 **Sec. 3. As used in this chapter, "state tax refund" includes the**
15 **amount of a state tax credit that is otherwise refundable to a**



person.

Sec. 4. If a debtor owes a debt reduced to a judgment in Indiana, the judgment creditor may:

- (1) have the department garnish a state tax refund payable to the debtor; and**
- (2) have the state tax refund applied against the judgment debt;**

as provided in this chapter.

Sec. 5. (a) To obtain a garnishment under this chapter, a judgment creditor must file a writ of garnishment with the court in which the original judgment lies.

(b) A writ of garnishment under this chapter must set forth the following:

- (1) The full name of the debtor.**
- (2) The last known address of the debtor.**
- (3) The cause number of the original action on the debt.**
- (4) The full Social Security number of the defendant, in compliance with the provisions of the Indiana Rules of Trial Procedure and judicial administrative rules concerning the filing of documents and information that are excluded from public access and are confidential.**
- (5) The date on which the judgment was entered.**
- (6) The present balance of the judgment after all payments have been applied.**
- (7) A notice to the debtor of the debtor's right to object to the garnishment of the state tax refund not more than twenty-one (21) days after receipt of the disclosure as described in section 6 of this chapter. The notice must also contain a box for the debtor to check to waive the debtor's right to a hearing and to waive the debtor's right to any objections under this chapter.**

(c) The judgment creditor shall serve a writ of garnishment under this chapter on the debtor in accordance with the Indiana Rules of Trial Procedure.

(d) The judgment creditor shall serve a writ of garnishment under this chapter on the department in accordance with the Indiana Rules of Trial Procedure.

Sec. 6. (a) Any objection to the writ of garnishment of the tax refund must be filed with the court not later than twenty-one (21) days after the date of service of the disclosure on the defendant.

(b) If the court rules against the judgment debtor, the judgment creditor may serve the writ of garnishment on the department. Upon receipt of the writ of garnishment, the department shall



1 deposit the amount available for garnishment in the same manner
2 required in subsection (c).

3 (c) If an objection is not filed under subsection (a) not later than
4 twenty-one (21) days after the date of service on the defendant, the
5 judgment creditor shall serve the writ on the department. The
6 department shall deposit the amount available for garnishment
7 under the terms of the writ with the plaintiff's attorney of record
8 in the garnishment action, or, if the plaintiff is not represented by
9 an attorney, with the plaintiff or the plaintiff's designee.

10 Sec. 7. (a) If one (1) or more writs of garnishment are received
11 by the department for the same debtor, the department shall give
12 priority to the writ of garnishment that is received first by the
13 department.

14 (b) The department shall process each writ of garnishment in
15 order of the date of receipt until the state tax refund of the debtor
16 has been applied in its entirety.

17 Sec. 8. A judgment creditor must pay to the department a
18 processing fee of eight dollars (\$8) that is chargeable to the debtor
19 for each writ of garnishment under this chapter that is served on
20 the department. The judgment creditor must pay the fee at the
21 time the writ of garnishment is served on the department.

22 Sec. 9. (a) The department's liability to the plaintiff under a writ
23 of garnishment under this chapter is limited to the amount of the
24 state tax refund due to the defendant for the period the writ of
25 garnishment is in effect, less any setoff, counterclaim, or other
26 demand of the state against the defendant. The department is not
27 liable for the department's negligence in carrying out its duties
28 under this chapter.

29 (b) After the department has deposited the amount available
30 under section 6(c) of this chapter, the department has no further
31 liability in the matter unless:

- 32 (1) a writ of garnishment is received by the department for a
33 subsequent year; or
- 34 (2) the amount deposited by the department under section 6(c)
35 of this chapter is in question.

36 Sec. 10. A setoff by a claimant agency under IC 6-8.1-9.5 or of
37 a child support obligation under IC 6-8.1-9.5 has priority over a
38 garnishment or any other action under this chapter.

